

identified by underlying retail forex transaction or underlying currency, strike price, transaction date, and expiration date;

(iii) All such option positions marked to the market and the amount each position is in the money, if any;

(iv) Any money, securities or other property in the separate margin account required by § 349.9(c); and

(v) A detailed accounting of all financial charges and credits to the retail forex customer's retail forex accounts during the monthly reporting period, including: money, securities, or property received from or disbursed to such customer; realized profits and losses; premiums and mark-ups; and fees, charges, and commissions.

(b) *Confirmation statement.* Each FDIC-supervised insured depository institution must, not later than the next business day after any retail forex transaction, send:

(1) To each retail forex customer, a written confirmation of each retail forex transaction caused to be executed by it for the customer, including offsetting transactions executed during the same business day and the rollover of an open retail forex transaction to the next business day;

(2) To each retail forex customer engaging in forex option transactions, a written confirmation of each forex option transaction, containing at least the following information:

(i) The retail forex customer's account identification number;

(ii) A separate listing of the actual amount of the premium, as well as each mark-up thereon, if applicable, and all other commissions, costs, fees and other charges incurred in connection with the forex option transaction;

(iii) The strike price;

(iv) The underlying retail forex transaction or underlying currency;

(v) The final exercise date of the forex option purchased or sold; and

(vi) The date the forex option transaction was executed.

(3) To each retail forex customer engaging in forex option transactions, upon the expiration or exercise of any option, a written confirmation statement thereof, which statement shall include the date of such occurrence, a description of the option involved, and,

in the case of exercise, the details of the retail forex or physical currency position which resulted therefrom including, if applicable, the final trading date of the retail forex transaction underlying the option.

(c) Notwithstanding the provisions of paragraphs (b)(1) through (3) of this section, a retail forex transaction that is caused to be executed for a pooled investment vehicle that engages in retail forex transactions need be confirmed only to the operator of such pooled investment vehicle.

(d) *Controlled accounts.* With respect to any account controlled by any person other than the retail forex customer for whom such account is carried, each FDIC-supervised insured depository institution shall promptly furnish in writing to such other person the information required by paragraphs (a) and (b) of this section.

(e) *Introduced accounts.* Each statement provided pursuant to the provisions of this section must, if applicable, show that the account for which the FDIC-supervised insured depository institution was introduced by an introducing broker and the name of the introducing broker.

§ 349.11 Unlawful representations.

(a) *No implication or representation of limiting losses.* No FDIC-supervised insured depository institution engaged in retail foreign exchange transactions or its IAPs may imply or represent that it will, with respect to any retail customer forex account, for or on behalf of any person:

(1) Guarantee such person or account against loss;

(2) Limit the loss of such person or account; or

(3) Not call for or attempt to collect margin as established for retail forex customers.

(b) *No implication or representation of engaging in prohibited acts.* No FDIC-supervised insured depository institution or its IAPs may in any way imply or represent that it will engage in any of the acts or practices described in paragraph (a) of this section.

(c) *No Federal government endorsement.* No FDIC-supervised insured depository institution or its IAPs may represent or imply in any manner whatsoever

that any retail forex transaction or retail forex product has been sponsored, recommended, or approved by the FDIC, the Federal government, or any agency thereof.

(d) *Assuming or sharing of liability from bank error.* This section shall not be construed to prevent an FDIC-supervised insured depository institution from assuming or sharing in the losses resulting from the FDIC-supervised insured depository institution's error or mishandling of a retail forex transaction.

(e) *Certain guaranties unaffected.* This section shall not affect any guarantee entered into prior to the effective date of this part, but this section shall apply to any extension, modification or renewal thereof entered into after such date.

§ 349.12 Authorization to trade.

(a) *Specific authorization required.* No FDIC-supervised insured depository institution may directly or indirectly effect a retail forex transaction for the account of any retail forex customer unless, before the transaction occurs, the retail forex customer specifically authorized the FDIC-supervised insured depository institution to effect the retail forex transaction.

(b) Requirements for specific authorization. A retail forex transaction is "specifically authorized" for purposes of this section if the retail forex customer specifies:

- (1) The precise retail forex transaction to be effected;
- (2) The exact amount of the foreign currency to be purchased or sold; and
- (3) In the case of an option, the identity of the foreign currency or contract that underlies the option.

§ 349.13 Trading and operational standards.

(a) *Internal rules, procedures, and controls required.* An FDIC-supervised insured depository institution engaging in retail forex transactions shall establish and implement internal policies, procedures, and controls designed, at a minimum, to:

- (1) Ensure, to the extent reasonable, that each order received from a retail forex transaction that is executable at or near the price that the FDIC-supervised insured depository institution

has quoted to the retail forex customer is entered for execution before any order in any retail forex transaction for

- (i) A any proprietary account;
- (ii) An account in which a related person has an interest, or any account for which such a related person may originate orders without the prior specific consent of the account owner if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account;
- (iii) an account in which such a related person has an interest, if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account; or
- (iv) an account in which such a related person may originate orders without the prior specific consent of the account owner if the related person has gained knowledge of the retail forex customer's order prior to the transmission of an order for a proprietary account.

(2) Prevent FDIC-supervised insured depository institution related persons from placing orders, directly or indirectly, with another person in a manner designed to circumvent the provisions of paragraph (a)(1) of this section;

(3) Fairly and objectively establish settlement prices for retail forex transactions; and

(b) *Disclosure of retail forex transactions.* No FDIC-supervised insured depository institution engaging in retail forex transactions may disclose that an order of another person is being held by the FDIC-supervised insured depository institution, unless the disclosure is necessary to the effective execution of such order or the disclosure is made at the request of the FDIC.

(c) *Handling of retail forex accounts of related persons of retail forex counterparties.* No FDIC-supervised insured depository institution engaging in retail forex transactions may knowingly handle the retail forex account of an employee of another retail forex counterparty's retail forex business unless the FDIC-supervised insured depository institution: